

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MICHAEL BURNHART, AKA (KELLY),

Plaintiff,

v.

HAROLD W. CLARK, *et al*,

Defendants.

Case No. C06-5326RJB-KLS

ORDER DIRECTING CLERK  
TO DISMISS PETITION  
WITHOUT PREJUDICE

This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1)(B). This matter comes before the Court upon plaintiff's request to withdraw his civil rights complaint. (Dkt. #16). After reviewing plaintiff's motion and the record, the Court hereby does find and ORDERS as follows:

Under Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 41, plaintiff has the right to voluntarily dismiss his case without order of the Court when no answer or motion for summary judgment has been filed by an adverse party. A plaintiff may voluntarily dismiss an action "at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs," without a court order. Fed. R. Civ. P. 41(a)(1). Procedurally in this case, defendants have not yet been served with the complaint. Accordingly, pursuant to Fed. R. Civ. P. 41(a)(1), plaintiff's request to withdraw his civil rights complaint (Dkt. #16) hereby is GRANTED.

1 The Clerk is directed to dismiss this matter without prejudice and to send a copy of this Order  
2 to plaintiff.

3 DATED this 13th day of September, 2006.  
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7 Karen L. Strombom  
8 United States Magistrate Judge  
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